

1 UNITED STATES COURT OF APPEALS

2 FOR THE SECOND CIRCUIT

3 August Term, 2004

4 (Argued: January 3, 2005

5 Reargued: October 26, 2005

6 Decided: August 18, 2006)

7 Docket No. 02-7275-cv

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13 SYLVIA PANETTA,

14 Plaintiff-Appellee,

15 v.

16 THOMAS M. CROWLEY, MARC JURNOVE,

17 Defendants-Appellants,

18 PATRICIA A. KELVASA, JOHN DOE I,

19 Defendants.

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29 B e f o r e: FEINBERG, WINTER, and SOTOMAYOR, Circuit Judges.

30 Two appellants appeal distinct issues: (i) defendant
31 Crowley appeals from a judgment after an adverse jury verdict in
32 the Southern District of New York (George A. Yanthis, Magistrate
33 Judge), awarding the plaintiff punitive damages for false arrest;
34 and (ii) defendant Jurnove appeals the denial of his motion for
35 attorneys' fees and costs as a prevailing defendant under 42
36 U.S.C. § 1988. We conclude that Crowley had probable cause as a
37 matter of law to arrest plaintiff and was thus entitled to
38 judgment. We find that the denial of attorneys' fees and costs
39

1 to defendant Jurnove was not an abuse of discretion. We
2 therefore reverse in part and affirm in part.

3 DAVID LAWRENCE III, Assistant
4 Solicitor General (Eliot Spitzer,
5 Attorney General of the State of
6 New York, Michael S. Belohlavek,
7 Deputy Solicitor General, of
8 counsel), New York, New York, for
9 Defendant-Appellant Thomas A.
10 Crowley.

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12 MARC JURNOVE, Plainview, New York,
13 pro se.

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15 SYLVIA PANETTA, Middletown, New
16 York, pro se.

17
18 CHARLES D. RIELY, Akin Gump Strauss
19 Hauer & Feld LLP (Jonathan M.
20 Jacobson, Matthew J. Atlas, on the
21 brief), New York, New York, for
22 Amicus Curiae.

23
24 WINTER, Circuit Judge:

25 After a jury trial, defendant Thomas A. Crowley was found
26 liable under 42 U.S.C. § 1983 for the false arrest of plaintiff
27 Sylvia Panetta. Defendant Marc Jurnove was held not liable for
28 claims of malicious prosecution and conspiring to subject Panetta
29 to false arrest. Judge Yanthis denied Panetta's motion for a new
30 trial on damages, Crowley's post-trial motion for judgment as a
31 matter of law or a new trial, and Jurnove's motion for attorneys'
32 fees and costs. Judge Yanthis also awarded Panetta \$1,000 in
33 punitive damages and ordered Crowley to pay Panetta \$50,894.03 in
34 attorneys' fees and costs.

35 Crowley appeals, arguing that he had probable cause as a

1 matter of law to arrest Panetta or, in the alternative, that he
2 was entitled to qualified immunity. Jurnove, as a prevailing
3 defendant, appeals from the denial of attorneys' fees and costs.
4 Panetta does not cross-appeal from the denial of her motion for a
5 new trial on damages.

6 We hold that Crowley had probable cause to arrest Panetta
7 because he relied on the complaints of a purported peace officer
8 as well as an identified citizen informant, and he corroborated
9 these complaints with personal observations. Crowley was
10 entitled to judgment as a matter of law, and we vacate the
11 judgment against him. However, we affirm the denial of
12 attorneys' fees and costs to Jurnove.

13 BACKGROUND

14 a) Facts

15 We of course view the evidence in the light most favorable
16 to Panetta. United States v. Space Hunters, Inc., 429 F.3d 416,
17 428-29 (2d Cir. 2005).

18 On April 17, 1998, Marc Jurnove and Patricia Kelvasa made a
19 walk-in complaint to New York State Trooper Crowley at the
20 Middletown, New York, State Police barracks. They alleged that
21 Sylvia Panetta was abusing her horse, Veil. During a 10 to 15
22 minute conversation, Jurnove and Kelvasa detailed their basis for
23 suspicions of animal cruelty. They stated that Veil had hair
24 loss; lice; scabbing; protrusion of ribs, top line, and hips;

1 bloated belly; patchy skin; and cracked hooves, all of which they
2 claimed was evidence that the horse was not properly cared for or
3 provided proper food. Jurnove and Kelvasa also showed Crowley a
4 series of recent photographs taken by Kelvasa, depicting several
5 of the physical maladies they had described. During this
6 meeting, Crowley, who had no previous experience with horses,
7 asked Jurnove and Kelvasa additional questions about Veil,
8 general horse care, and signs of neglect.

9 While Crowley lacked training with respect to horses,
10 Jurnove and Kelvasa represented themselves as having expertise in
11 horse care. Jurnove informed Crowley that he had served as the
12 chief cruelty investigator of the Long Island Humane Society, as
13 an agent in the special investigations unit of the American
14 Society for the Prevention of Cruelty to Animals, and as a
15 director of the International Society for the Protection of
16 Exotic Animal Kind & Livestock ("I-SPEAK"). Jurnove also
17 represented that he had received advanced equine training and was
18 certified in evaluating the physical status of horses, including
19 body weight and hoof conditions. Furthermore, Jurnove provided
20 Crowley with a written statement indicating that he was a "NY
21 State Peace Officer" or simply a "Peace Officer" in connection
22 with some of the positions described above. Kelvasa based her
23 equine credentials on her service as a co-leader of a 4-H
24 program, in which she instructed children in the care, feeding,

1 and treatment of horses, as well as her personal ownership of
2 horses.

3 Jurnove also provided Crowley with a seven-page written
4 statement, supplied on I-SPEAK letterhead, describing Veil's
5 condition. The written statement was intended to support
6 Jurnove's belief that Veil was being kept in violation of the
7 animal cruelty laws, specifically New York Agriculture and
8 Markets Law § 353. After listing Jurnove's animal protection
9 credentials, the written statement describes Jurnove's 1995
10 observations of Veil and his attempts to aid the horse. The last
11 page of the written statement recounted Kelvasa's contacting of
12 Jurnove about Veil's poor condition, Jurnove and Kelvasa's visit
13 with Veil the next day, and the horse's present distressed state.
14 The written statement concluded with the sentence: "I understand
15 any false statement is a Class A misdemeanor by New York State
16 Law." While Jurnove's written statement indicated his prior
17 involvement with Veil in 1995, Jurnove did not inform Crowley
18 that Panetta had previously sued him unsuccessfully for malicious
19 prosecution stemming from Jurnove's 1995 actions.

20 After receiving the information provided to him by Jurnove
21 and Kelvasa,¹ Officer Crowley and another officer researched the
22 applicable law, New York Agriculture and Markets Law § 353. That
23 provision makes it a misdemeanor to "deprive[] any animal of
24 necessary sustenance or drink, or neglect[] or refuse[] to

1 furnish it with such sustenance or drink, or . . . permit[] any
2 animal to be unjustifiably injured." N.Y. Agric. & Mkts. Law §
3 353. Returning to Jurnove and Kelvasa, Crowley informed them
4 that he was "not gonna just go out there, [and] arrest [Panetta]
5 on your statement," but rather he would "investigate and take it
6 from there."

7 b) Crowley's Observation of Veil

8 Following his meeting with Jurnove and Kelvasa, Crowley
9 proceeded to view Veil for himself. Upon his arrival at
10 Panetta's property, Crowley spoke with a man standing diagonally
11 across the street and confirmed that he was at the correct
12 address. Crowley also inquired whether the man knew anything
13 about horses, and, when he received a positive response, asked
14 the man's impression of the horse. The man told Crowley that
15 Veil appeared to be in poor condition and also warned him to
16 beware of the many dogs on Panetta's property.

17 Following this conversation, Crowley observed Veil for
18 approximately five minutes from a fence line. From a distance of
19 fifteen to twenty feet, Crowley confirmed many of Veil's
20 maladies, including the protruding ribs and topline, a bloated
21 belly, patchy skin, and cracked hooves. Crowley decided to issue
22 Panetta an appearance ticket, which constitutes non-custodial
23 arrest and requires the issuee to appear in court at a specified
24 time. See N.Y. Crim. Proc. Law § 150.20 (outlining the procedure

1 for the use of appearance tickets in specific circumstances);
2 N.Y. Agric. & Mkts. Law § 371 (permitting use of appearance
3 tickets for violations of animal cruelty laws).

4 c) Panetta's Arrest

5 Although the accounts of Panetta's arrest differ, we recount
6 the evidence in the light most favorable to Panetta. See Diesel
7 v. Town of Lewisboro, 232 F.3d 92, 103 (2d Cir. 2000).

8 Crowley drove his marked police car up Panetta's driveway.
9 Panetta was standing on her deck speaking with another woman,
10 Margaret Bernard, who was there to breed her rottweiler with
11 Panetta's stud dog. As Crowley, dressed in uniform, exited the
12 car, Panetta asked if she could help him. Crowley responded by
13 asking twice whether any dogs were loose. After Panetta assured
14 him that the dogs were secured, Crowley informed Panetta that he
15 was arresting her. Panetta asked, "for what?" and Crowley
16 replied, "Animal cruelty . . . for the horse." Panetta asked how
17 Crowley could arrest her for animal cruelty "when the horse is
18 under a veterinarian's care?" Crowley allegedly replied that he
19 did not care. Panetta then asked Crowley if he had a search
20 warrant or a written or verbal complaint, and Crowley said that
21 he did not; Crowley said that he had just been driving by and saw
22 the horse. When Panetta asked what Crowley thought was wrong
23 with the horse, he replied, "Well, look at her." Panetta
24 retorted, "I did, that's why I called my vet, you know, why don't

1 you call him?" Crowley declined to call the veterinarian and
2 handcuffed Panetta.

3 After Panetta's arrest, she asked to go in the house for her
4 purse and medications, but Crowley would not let her. Panetta
5 repeated several times that the horse was seeing a vet, but
6 Crowley either did not answer or said he did not care. Moreover,
7 Crowley did not ask any questions about the horse.

8 Around this time, Gil Brandt, who lived with Panetta,
9 approached and asked how Crowley could arrest her if the horse
10 was under a veterinarian's care. Crowley replied that he did not
11 care. After commenting that this situation reminded him of the
12 Gestapo where people are taken from their homes for no reason at
13 all, Brandt coughed and spit on the ground. Crowley, believing
14 Brandt spit at him, handcuffed Brandt and arrested him for
15 disorderly conduct. Crowley put Brandt in the police car, and
16 Panetta, realizing that nobody would be left at home, began
17 pleading to be allowed to put the mating dogs away and take care
18 of a sick dog before she left. Crowley refused and put her in
19 the car with Brandt.

20 While driving toward the police barracks, Panetta remembered
21 that she left the stove on and asked to return to her house to
22 turn it off. Despite her pleas, Crowley kept driving for a while
23 before turning around and going back to the house. Crowley asked
24 Panetta, "if I take you back to your house, do you promise you're

1 going to turn the stove off?" Panetta told Crowley that she
2 would "turn the stove off . . . give the woman back her dog . . .
3 put [her] stud dog back in the house and . . . take the sick dog
4 and bring him into the house." When they returned to the house,
5 Panetta entered the house, turned off the stove, and brought in
6 her sick dog. Panetta, however, also called her veterinarian and
7 brought the phone to Crowley, informing him that her "vet . . .
8 wants to talk to you." Crowley responded, "you promised you were
9 just going to turn off the stove." Crowley then took the phone,
10 disconnected it, put Panetta in the car, and resumed the trip to
11 the police barracks.

12 Panetta was issued an appearance ticket for animal cruelty
13 in violation of New York Agriculture and Markets Law § 353. The
14 charge was later dismissed based on Panetta's veterinarian's
15 affidavit that when he saw Veil on April 16, 1998, she was "in
16 reasonably good health considering her age" and that there "was
17 no indication of a lack of care on the part of Ms. Panetta."

18 d) District Court Decision

19 Panetta brought the present action against Crowley, Jurnove,
20 and Kelvasa. Against Crowley she alleged false arrest and
21 excessive force. She also claimed that Jurnove and Kelvasa
22 engaged in malicious prosecution and conspired with the police to
23 subject her to false arrest. Panetta voluntarily dismissed the
24 claims against Kelvasa. All claims but the conspiracy count

1 survived motions for summary judgment. The jury found Crowley
2 liable on the false arrest claim but not on the excessive force
3 claim. It awarded \$1,000 in punitive damages but no compensatory
4 or nominal damages. The jury found Jurnove not liable on the
5 malicious prosecution claim.

6 Panetta moved for a new trial on damages and for attorneys'
7 fees and costs; Crowley moved for judgment as a matter of law
8 under Rule 50(b) or for a new trial under Rule 59(a); and Jurnove
9 moved for attorneys' fees and costs as a prevailing defendant
10 under 42 U.S.C. § 1988. Judge Yanthis granted Panetta's motion
11 for fees (\$48,577.75) and costs (\$2,316.28) and denied all other
12 motions.

13 Crowley argues that he was entitled to judgment as a matter
14 of law because he had probable cause to arrest Panetta. In the
15 alternative, Crowley contends that he was entitled to qualified
16 immunity. Crowley also claims that, in any event, there was no
17 evidence to support a punitive damages award. Jurnove argues
18 that he is entitled to attorneys' fees and costs. Panetta does
19 not cross appeal the denial of a new trial on damages.

20 DISCUSSION

21 We review the denial of a motion for judgment as a matter of
22 law de novo, applying the same standard applied by the district
23 court. Diesel, 232 F.3d at 103. Thus, we view the evidence in
24 the light most favorable to the prevailing party and draw all

1 reasonable inferences in her favor. Id. Judgment as a matter of
2 law is appropriate if no reasonable factfinder could have viewed
3 the evidence as supporting the plaintiff's claim. Malik v.
4 Carrier Corp., 202 F.3d 97, 103 (2d Cir. 2000).

5 a) Probable Cause

6 New York Agriculture and Markets Law § 353 is to be enforced
7 principally by police officers; however, agents and officers of
8 incorporated societies for the prevention of cruelty to animals
9 have a role as well. Specifically, Section 371 confers peace
10 officer status on "agents or officers of any duly incorporated
11 society for the prevention of cruelty to animals," N.Y. Agric. &
12 Mkts. Law § 371, and such individuals "may" issue appearance
13 tickets to "any person offending against" Section 353. Id. They
14 may also make complaints of Section 353 violations to a court,
15 tribunal, or magistrate. Id. Finally,

16 [u]pon complaint under oath or affirmation to any
17 magistrate authorized to issue warrants in criminal
18 cases, that the complainant has just and reasonable
19 cause to suspect that [inter alia, Section 353 is]
20 being or about to be violated in any particular
21 building or place, such magistrate shall immediately
22 issue and deliver a warrant to any person authorized by
23 law to make arrests for such offenses, authorizing him
24 to enter and search such building or place, and to
25 arrest any person there present found violating any of
26 said laws

27
28 Id. § 372.

29 Before deciding whether Crowley is entitled to qualified
30 immunity, we must decide whether Panetta "has alleged a

1 constitutional violation at all." Kerman v. City of New York,
2 261 F.3d 229, 235 (2d Cir. 2001) ("When determining whether
3 qualified immunity protects an official, we must first determine
4 whether the plaintiff has presented facts which, if proven,
5 demonstrate that the defendant violated a constitutional right.")
6 (internal quotations and citations omitted). Panetta cannot
7 recover for false arrest if Crowley had probable cause to arrest
8 her.

9 Probable cause requires an officer to have "knowledge or
10 reasonably trustworthy information sufficient to warrant a person
11 of reasonable caution in the belief that an offense has been
12 committed by the person to be arrested." Martinez v. Simonetti,
13 202 F.3d 625, 634 (2d Cir. 2000) (citation omitted). "When
14 determining whether probable cause exists courts must consider
15 those facts available to the officer at the time of the arrest
16 and immediately before it," Caldarola v. Calabrese, 298 F.3d 156,
17 162 (2d Cir. 2002) (emphasis supplied), as "[p]robable cause does
18 not require absolute certainty." Boyd v. City of New York, 336
19 F.3d 72, 76 (2d Cir. 2003). Courts should look to the "totality
20 of the circumstances" and "must be aware that probable cause is a
21 fluid concept -- turning on the assessment of probabilities in
22 particular factual contexts -- not readily, or even usefully,
23 reduced to a neat set of legal rules." Caldarola, 298 F.3d at
24 162 (citation omitted). Nevertheless, an officer may not

1 disregard plainly exculpatory evidence. Kerman, 261 F.3d at 241
2 (citing Kuehl v. Burris, 173 F.3d 646, 650 (8th Cir. 1999)).

3 When making a probable cause determination, police officers
4 are "entitled to rely on the allegations of fellow police
5 officers." Martinez, 202 F.3d at 634; see also Caldarola, 298
6 F.3d at 166-67 (citing Bernard v. United States, 25 F.3d 98, 102-
7 03 (2d Cir. 1994)). "Absent significant indications to the
8 contrary, an officer is entitled to rely on his fellow officer's
9 determination that an arrest was lawful." Loria v. Gorman, 306
10 F.3d 1271, 1288 (2d Cir. 2002). "[T]he determination of probable
11 cause does not turn on whether [the fellow agent's] observations
12 were accurate, but on whether [the arresting agent] was
13 reasonable in relying on those observations." Bernard, 25 F.3d
14 at 103.

15 Moreover, information gleaned from informants can be
16 sufficient to justify the existence of probable cause. "[I]t is
17 well-established that a law enforcement official has probable
18 cause to arrest if he received his information from some person,
19 normally the putative victim or eyewitness," Martinez, 202 F.3d
20 at 634 (citation omitted), unless the circumstances raise doubt
21 as to the person's veracity, Singer v. Fulton County Sheriff, 63
22 F.3d 110, 119 (2d Cir. 1995). The reliability or veracity of the
23 informant and the basis for the informant's knowledge are two
24 important factors. Caldarola, 298 F.3d at 162. "[A] tip from a

1 known informant whose reputation can be assessed and who can be
2 held responsible if her allegations turn out to be fabricated" is
3 especially significant in establishing probable cause. Florida
4 v. J.L., 529 U.S. 266, 270 (2000). Moreover, information
5 provided by "an identified bystander with no apparent motive to
6 falsify" has "a peculiar likelihood of accuracy," Caldarola, 298
7 F.3d at 163 (citation omitted), and we have endorsed the
8 proposition that "an identified citizen informant is presumed to
9 be reliable." Id. at 165.

10 Furthermore, "[t]he fact that an innocent explanation may be
11 consistent with the facts alleged . . . does not negate probable
12 cause," United States v. Fama, 758 F.2d 834, 838 (2d Cir. 1985),
13 and an officer's failure to investigate an arrestee's
14 protestations of innocence generally does not vitiate probable
15 cause. In Curley v. Village of Suffern, 268 F.3d 65 (2d Cir.
16 2001), we held that when a purported assault victim who was
17 visibly injured told a police officer that Curley had assaulted
18 him, the officer had probable cause to arrest Curley, despite
19 Curley's conflicting account. Id. at 70. We said that:

20 [O]nce a police officer has a reasonable basis for
21 believing there is probable cause, he is not required
22 to explore and eliminate every theoretically plausible
23 claim of innocence before making an arrest.

24 Although a better procedure may [be] for the
25 officers to investigate plaintiff's version of events
26 more completely, the arresting officer does not have to
27 prove plaintiff's version wrong before arresting him.
28 Nor does it matter that an investigation might have
29 cast doubt upon the basis for the arrest. Before

1 making an arrest, if the arresting officer has probable
2 cause, he need not also believe with certainty that the
3 arrestee will be successfully prosecuted.
4

5 Id. (internal quotation marks and citations omitted). We have
6 also noted that "[o]nce officers possess facts sufficient to
7 establish probable cause, they are neither required nor allowed
8 to sit as prosecutor, judge or jury. Their function is to
9 apprehend those suspected of wrongdoing, and not to finally
10 determine guilt through a weighing of the evidence." Krause v.
11 Bennett, 887 F.2d 362, 372 (2d Cir. 1989).

12 When Crowley arrested Panetta -- i.e., when he first placed
13 her into custody and began to transport her to the police
14 barracks -- Crowley had "reasonably trustworthy information,"
15 Martinez, 202 F.3d at 634 (citation omitted), that the horse was
16 being denied sustenance or drink and/or was being unjustifiably
17 injured in violation of New York Agriculture and Markets Law §
18 353. Thus, under the "totality of the circumstances" and
19 considering those facts available to Crowley at the time of the
20 arrest, Caldarola, 298 F.3d at 162, we conclude that Crowley had,
21 as a matter of law, probable cause to arrest Panetta.

22 First, a reasonable officer could rely on the observations
23 of Jurnove, who claimed to be a peace officer as defined in New
24 York Agriculture and Markets Law § 371.² Jurnove's written
25 statement claimed that he was a "director" of the "humane society
26 I-SPEAK," an organization "Dedicated to the Welfare of All

1 Displayed/Owned Exotic Animals & Livestock" since 1972.
2 Moreover, the written statement described Jurnove's expertise in
3 equine health and abuse evaluation and listed several other
4 positions held by Jurnove in which he was denominated a "NY State
5 Peace Officer" or simply "Peace Officer." Crowley was therefore
6 justified in presuming the reliability of Jurnove's claim that
7 "all animals seen need immediate attention."³

8 Furthermore, Jurnove's complaints were corroborated by
9 Kelvasa, an identified citizen informant, whose knowledge of
10 Veil's neglected state was based on her own personal
11 observations. Not only does Kelvasa's status as an identified
12 citizen informant provide an indicia of reliability, Caldarola,
13 298 F.3d at 165, but the fact that Jurnove and Kelvasa's
14 descriptions of Veil were based on eyewitness accounts also
15 carries additional weight in assessing the reasonableness of
16 Crowley's probable cause determination, Martinez, 202 F.3d at
17 634. Crowley also received a series of recent photographs that
18 substantiated Jurnove and Kelvasa's verbal and written
19 statements. Finally, Jurnove's affidavit and the written
20 statement later produced by Kelvasa both contain acknowledgments
21 that any false statements made to Crowley subjected the authors
22 to criminal penalties. This exposure to criminal penalties is an
23 additional factor supporting the reasonableness of Crowley's
24 reliance on Jurnove and Kelvasa's complaints. See Illinois v.

1 Gates, 462 U.S. 213, 233-34 (1983).

2 Moreover, Crowley himself observed the horse and found that
3 the descriptions of ailments and problems he had received from
4 Jurnove and Kelvasa were accurate. See Bernard, 25 F.3d at 103
5 ("[The arresting officer] was reasonable in relying on [the
6 fellow officer's] observations, particularly where they
7 corresponded with [the arresting officer's] own observation.").
8 Indeed, it was only after observing Veil for a full five minutes
9 from a distance close enough to identify all of her maladies that
10 Crowley determined that he had enough evidence to constitute
11 probable cause for Panetta's arrest.

12 Panetta argues that despite the information at Crowley's
13 disposal, he was required to further investigate the matter
14 before arresting Panetta. Specifically, Panetta argues that
15 Crowley ignored (or failed to inquire about) the horse's age,
16 which might have explained some of its symptoms. Panetta further
17 contends that Crowley ignored her statements that the horse was
18 under veterinary care, that she was properly caring for the
19 animal, and that a phone call to her veterinarian would clear her
20 of wrongdoing. Finally, Panetta argues that Crowley was wrong to
21 refuse to speak to the horse's veterinarian when Panetta reached
22 him on the phone after being returned to her house to turn off
23 the stove.

24 However, Crowley's decision not to heed Panetta's assertions

1 that the horse was under veterinary supervision did not
2 constitute a disregard for exculpatory evidence sufficient to
3 eliminate probable cause. Crowley was not "required to explore
4 and eliminate every theoretically plausible claim of innocence,"
5 Curley, 268 F.3d at 70, after confirming the presence of the
6 abuse symptoms alleged by the complainants. Once an officer has
7 probable cause, he or she is "neither required nor allowed" to
8 continue investigating, sifting and weighing information.
9 Krause, 887 F.2d at 372. Thus, he was not required to prove
10 wrong Panetta's conflicting account of the horse's condition or
11 to seek the advice of the veterinarian before effectuating the
12 arrest. See Caldarola, 298 F.3d at 168 ("We consider only
13 information [the officer] relied on in concluding that there was
14 probable cause to arrest [the plaintiff]," not every
15 theoretically plausible piece of exculpatory evidence or claim of
16 innocence that might have existed.); Krause, 887 F.2d at 371
17 ("[P]robable cause does not require an officer to be certain that
18 subsequent prosecution of the arrestee will be successful. 'It
19 is therefore of no consequence that a more thorough or more
20 probing investigation might have cast doubt upon' the
21 situation.") (quoting United States v. Manley, 632 F.2d 978, 984
22 (2d Cir. 1980)).

23 Panetta relies heavily upon Kerman, 261 F.3d 229, as
24 demonstrating the unreasonableness of Crowley's decision to

1 arrest Panetta. In Kerman, the police received an anonymous 911
2 tip that a mentally ill man was off his medication, acting
3 crazily, and possibly had a gun. Id. at 232. The police entered
4 Kerman's apartment without a warrant, but did not find a gun, did
5 not observe any obstreperous behavior by Kerman, but ordered
6 Kerman's involuntary hospitalization after hanging up on Kerman's
7 psychiatrist. Id. at 236, 240-41.

8 We held that the officer in charge did not have qualified
9 immunity from Kerman's false arrest claim because the
10 investigation was not reasonable as a matter of law. Id. at 240-
11 41. We noted that the 911 tip was not corroborated by the
12 investigation: no gun was found, and Kerman acted calmly, not
13 crazily. Id. at 240.

14 Furthermore, the officers deliberately ignored two
15 opportunities to confirm the seriousness of Kerman's
16 condition. The police gave short shrift to [the
17 anonymous 911 caller] when she called the apartment,
18 and hung up on [Kerman's psychiatrist] without making
19 any effort to ascertain whether Kerman presented a
20 threat to himself or others.

21
22 Id. at 241. Because the officers "had the opportunity to consult
23 a medical professional familiar with the patient's condition,"
24 the court could not "see the reasonableness of hanging up on a
25 doctor in such a situation." Id.

26 However, Kerman is easily distinguishable. First, Kerman
27 emphasized as a basis for its holding that the 911 tipster was
28 anonymous and that the tipster's gun claims were known to be

1 wrong when the arrest was made. Id. at 240-41. Crowley,
2 however, acted on the complaints of two identified individuals --
3 one of whom was a purported peace officer under the relevant
4 statute -- and corroborated the complaints with his own
5 observations of Veil. Second, the police in Kerman refused to
6 talk to the psychiatrist before making their decision to seize
7 Kerman and order his removal to a hospital. Id. at 241. In this
8 case, Crowley hung up on the veterinarian only after having
9 completed the arrest of Panetta, driving partway to the police
10 barracks, and returning to the house only to permit Panetta to
11 turn off her stove. Thus, Crowley's decision to hang up on the
12 veterinarian after arresting Panetta is not analogous to the
13 officer's decision in Kerman to hang up on the psychiatrist
14 before seizing Kerman and sending him to the hospital.

15 Because we find that Crowley had probable cause to arrest
16 Panetta after he confirmed Jurnove and Kelvasa's complaint, no
17 constitutional violation occurred.

18 b) Jurnove's Motion for Attorneys' Fees and Costs

19 Under 42 U.S.C. § 1988(b), in any action to enforce Section
20 1983, a district court, "in its discretion, may allow the
21 prevailing party, other than the United States, a reasonable
22 attorney's fee as part of the costs." We review a grant or
23 denial of section 1988 fees for abuse of discretion.
24 LeBlanc-Sternberg v. Fletcher, 143 F.3d 765, 770 (2d Cir. 1998).

1 Fees are regularly awarded to prevailing plaintiffs who obtain
2 some significant measure of relief but not to prevailing
3 defendants. See, e.g., Hughes v. Rowe, 449 U.S. 5, 15-16 (1980)
4 (per curiam). Instead, "a plaintiff should not be assessed his
5 opponent's attorney's fees unless a court finds that his claim
6 was frivolous, unreasonable, or groundless, or that the plaintiff
7 continued to litigate after it clearly became so."
8 Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 422 (1978). A
9 prevailing defendant need not show bad faith by a plaintiff to be
10 entitled to attorneys' fees, though such a showing provides "an
11 even stronger basis" for the award. Id.

12 The district court's denial of attorneys' fees to Jurnove
13 was not an abuse of discretion. Panetta's claim against him for
14 malicious prosecution had some basis in fact. Jurnove complained
15 to the police about Veil; he had complained unsuccessfully in the
16 past; and he knew of Veil's advanced age yet failed to discuss
17 the possible relevance of this fact with the police. Panetta's
18 conspiracy claim, though perhaps very thin, was not frivolous
19 because of the understandably curious, at least from Panetta's
20 perspective, sequence of events: Jurnove complained to Crowley;
21 Crowley arrested Panetta; and Jurnove was at the police station
22 when she arrived. Furthermore, after the conspiracy claim was
23 dismissed, Panetta did not attempt to continue litigating it.

24 CONCLUSION

For the reasons above, Crowley had probable cause to arrest Panetta and thus was entitled to judgment as a matter of law. We therefore vacate the judgment against Crowley. We affirm the denial of attorneys' fees and costs to Jurnove.

We thank the amicus curiae for the brief in this case.

1 FOOTNOTES

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3 1. Later the same evening, Kelvasa, with the help of another officer, reduced her oral complaint about Veil to writing. The written statement signed by Kelvasa concludes with a "Notice" of "Penal Law § 210.45" that "any person who knowingly makes a false statement which such person does not believe to be true committed a crime under the laws of the state of New York punishable as a Class A Misdemeanor."

2. Under New York law, the "peace officer" category includes individuals in a wide range of law-enforcement and quasi-law-enforcement roles; police officers are among them. See N.Y. Crim. Proc. Law § 2.10 (enumerating 80 categories of peace officers). As discussed above, under our precedent, a police officer is entitled to rely upon a fellow officer's determination that an arrest is lawful, so long as there are not "significant indications to the contrary." Loria v. Gorman, 306 F.3d 1271, 1288 (2d Cir. 2002). We have never determined whether nonpolice peace officers should be treated like police officers for purposes of this rule. We have recognized that in some circumstances it may be appropriate for a police officer to give weight to the statements of a nonpolice peace officer without extensive inquiry into the peace officer's credentials or

qualifications to assess probable cause. In Ricciuti v. N.Y.C. Transit Authority, 124 F.3d 123 (2d Cir. 1997), for example, we concluded that a police officer had had probable cause to arrest where he relied upon a corrections officer's claim that the arrestee had assaulted him. Id. at 128. We noted that the corrections officer had displayed signs of injury and that his account was "buttressed" by the fact that he had identified himself as a law enforcement officer. Id. But whether, in other circumstances, especially where time is not of the essence or where judgment and expertise are required to determine whether a crime has occurred, a police officer should take care to verify the purported peace officer's credentials and the basis for his or her assessment that a crime has occurred is not before us.

Jurnove's actual peace officer status under Section 371 was called into question, albeit not conclusively rebutted, at trial. The only issue before us, however, is whether Crowley was reasonable in relying on Jurnove's statement. There was no evidence that Crowley should have known that Jurnove lacked the proper authority or lied about his credentials as an authorized representative of I-SPEAK. Indeed, Jurnove's written statement was sworn under oath and contains a statement acknowledging his understanding of the penalties at law for any false statements made in the statement. Moreover, Jurnove's statement indicated that he had expertise relevant to his assessment of Veil's

condition and that he had observed the horse personally. Thus, it was appropriate for Crowley to give weight to Jurnove's statement. Moreover, Crowley engaged in further investigation of Veil's condition before deciding to arrest Panetta.

3. Panetta argues that, because Jurnove had lodged a complaint against her once before and been sued by her, Crowley should not be permitted to rely on Jurnove's complaints as a basis for probable cause. We disagree. These circumstances were not sufficient to render it unreasonable to give weight to Jurnove's complaint. As the Supreme Court stated in Gates, "even if we entertain some doubt as to an informant's motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case." 462 U.S. at 234.